

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**

Tracy G. Elmore,)
)
Plaintiff,) Civil Action No. 1:14-4144-RMG
)
vs.)
)
Carolyn W. Colvin, Commissioner of) **ORDER**
Social Security,)
)
Defendant.)
)
)

This matter comes before the Court for judicial review of the final decision of the Commissioner of Social Security denying Plaintiff's application for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI"). In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to the United States Magistrate Judge for pretrial handling. The Magistrate Judge issued a Report and Recommendation ("R & R") on August 25, 2015 recommending that the decision of the Commissioner be reversed and remanded to the agency. (Dkt. No. 19). The Magistrate Judge's recommendation is based on (1) the Administrative Law Judge's failure to consider the combined affect of Plaintiff's various impairments (*Id.* at 25-28); (2) the Administrative Law Judge's erroneous conclusion that Listing 12.05 required substantiating records documenting the claimant's IQ before age 22 (*Id.* at 32); (3) the failure of any fact finder to consider and weigh the evidence submitted to the Appeals Council and reconcile it with other record evidence regarding Listing 12.05 (*Id.* at 33-34); and (4) the failure of the Administrative Law Judge to weigh the adoption of the functional capacity

evaluation by Plaintiff's treating physician under the standards of the Treating Physician Rule, 20 C.F.R. § 404.1527(c). The Commissioner has filed a reply to the R & R indicating that she does not intend to file any objections to the recommendations of the Magistrate Judge. (Dkt. No. 22).

The Court has reviewed the R & R and the record evidence and finds that the Magistrate Judge has ably addressed the factual and legal issues in this matter and correctly concluded that the decision of the Commissioner should be reversed and remanded. Therefore, the Court **ADOPTS** the Report and Recommendation as the order of this Court (Dkt.. No. 19), **REVERSES** the decision of the Commissioner pursuant to Sentence Four of 42 U.S.C. § 405(g), and **REMANDS** the matter to the Commissioner for further proceedings consistent with this order.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Judge

Charleston, South Carolina
September Y, 2015